(1) S.B.CIVIL MISC. APPEAL NO.165/2005

(The New India Assurance Company Ltd. Vs. Smt. Chanda)

(2) S.B.CIVIL MISC. APPEAL NO.1560/2006

(Smt.Chanda Kanwar & Anr. Vs Devi Lal & Ors.)

Date of Order :: 11.12.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Jagdish Vyas, for the insurer.
Mr. Rajendra Charan, for the claimant.s

...

At the request and with the consent of learned counsel for the parties, these two appeals, CMA No.165/2005 and CMA No.1560/2006 are taken up for disposal at this stage and by this common order.

On 25.10.2003 at about 7.00 p.m. Kalu Singh, about 20-21 years of age riding his motor cycle going from Bhilwara to Hamirgarh received fatal injuries on being hit by on-coming mini bus bearing registration No.RJ 06/P 1853. The parents of the deceased Kalu Singh, Smt. Chanda Kanwar and Lal Singh, filed the claim application seeking compensation on account of accidental death of their only son. For quantification of compensation, it was stated that the deceased was engaged on the job of operator with J.D.M. Borwell Company earning salary income of Rs.4,000/- per month and the claimants were solely dependent upon him.

The owner and driver of the vehicle remained ex parte and insurer of the vehicle, the appellant of CMA No.165/2005 contested the claim application alleging the accident to have occurred for negligence of the deceased himself and claimed exoneration on the ground that the driver of the offending vehicle was not holding valid driving licence.

After framing of necessary issues and taking evidence led by the claimants (the non-applicant did not lead any evidence), the Tribunal proceeded to decide in issue Nos.1 and 3 that the accident occurred for rash and negligent driving of the said mini bus and there was no contribution of the deceased to the accident. The suggestions of the insurer about its exoneration were rejected in issue No.4 with the finding that driver of the bus was holding a valid driving licence. Taking up quantification of compensation in issue No.2 the Tribunal observed that no cogent corroborative evidence was adduced to prove the salary income of the deceased at Rs.4,000/- per month while working as Operator with the aforesaid J.D.M. Borwell Company. In the circumstances, the Tribunal took the deceased an unskilled labourer and his earnings at Rs.73/- per day i.e. Rs.26,645/- per annum. Deducting one-third on his personal expenditure, the Tribunal took loss of contribution at Rs.17,763/- per annum and in view of age of the deceased shown in the post-mortem

report at 20 years considered it appropriate to apply multiplier of 16 to assess pecuniary loss at Rs.2,84,208/-. The Tribunal further allowed Rs.20,000/- towards non-pecuniary loss and Rs.2,000/- towards funeral expenses and thereby found the claimants entitled for total compensation in the sum of Rs.3,06,208/-. The Tribunal also allowed interest at the rate of 6% per annum on the award amount and directed equal apportionment of award amount between the claimants while placing 70% for each in fixed deposits and 30% to be paid cash.

Assailing the quantum of compensation so awarded, the insurer of the vehicle has preferred appeal (CMA No.165/2005) that has been admitted on 07.02.2005 while noticing the submission that the appellant was granted permission under Section 170 of the Motor Vehicles Act and the contention that claimants are parents in the age of about 50 years and more and yet the Tribunal has applied multiplier on the basis of the age of victim. This Court has also ordered that if the appellant deposits 50% of the awarded amount including the amounts already paid under Sections 140 and 173, the recovery of the balance amount shall remain stayed. In this appeal, the claimants and so also driver of the offending vehicle have already been served, however the owner of the vehicle, respondent No.4 has not been served. Learned

counsel Mr.Rajendra Charan has put in appearance for the claimants.

On the other hand, the claimants have filed appeal (CMA No.1560/2006) seeking enhancement over the amount awarded by the Tribunal. This appeal has been placed for admission.

On these two matters being taken up together for consideration, learned counsel for the claimants and learned counsel for the insurer submitted that both the appeals may be disposed of in view of the consensus reached by the parties whereby the parties have agreed that the award made by the Tribunal may be modified and in place of the amount of Rs.3,06,208/- awarded by the Tribunal, the award may be re-stated allowing compensation in the sum of Rs.2,50,000/- to the claimants.

The deceased was about 20 years in age and was an unmarried person. Ordinarily, in the case of an unmarried person, assessment of multiplicand after taking entire of two-third of his estimated income towards loss of contribution to his parents does not appear justified. Having regard to the future certainties as well as uncertainties, his getting married in future and a large part of his income getting diverted to his own family cannot be ruled out. Application of multiplier of 16 is also not justified particularly when the parents have been

shown in the age group of 50-55 years.

However, the estimate put by the Tribunal on the income of the deceased only at Rs.73/- per day i.e. about Rs.2,190/- per month does not appear adequate. The deceased has been alleged to be working as an operator on a boring machine and even if his salary income at Rs.4,000/- per month be not accepted for want of corroborative evidence, it appears appropriate that his income be assessed at about Rs.3,600/- per month. In view of the unmarried status of the deceased, this Court is of opinion that not more than one-half of his estimated income could be taken towards loss of contribution i.e. at Rs.1,800/- per month leading to a multiplicand of Rs.21,600/- per annum. In view of the age of the claimants, it appears appropriate to apply multiplier of 11 that leads to pecuniary loss at Rs.2,37,600/- Adding a component of about Rs.10,000/- towards non-pecuniary loss and remaining towards funeral expenses, this Court is satisfied that the figure arrived at by the parties in consensus at Rs.2,50,000/- represents the amount of just compensation admissible in this case to the claimants. Hence, the agreement stated by learned counsel for he parties deserves to be approved.

In view of the agreement between the relevant parties to the litigation, i.e. the claimants and the insurer, it

does not appear necessary to wait for service of notices on the owner of the vehicle, respondent No.4 in CMA No.165/2005.

Accordingly, CMA No.165/2005 succeeds to the extent indicated above and with the consent of the parties, the award is modified and restated allowing total compensation to the claimants in the sum of Rs.2,50,000/- in place of the amount of Rs.3,06,208/- as awarded by Tribunal. The claimants shall also be entitled for interest at the rate of 6% per annum from the date of filing of claim application.

The remaining amount payable under the modified award shall be deposited by the insurer within 30 days from today with the Tribunal and the Tribunal shall carry out requisite apportionment and issue necessary orders for disbursement.

As a consequence of agreement between the parties, CMA No.1560/2006 is rendered redundant and is dismissed as such. There shall be no order as to costs.

(DINESH MAHESHWARI),J.

MK

S.B.CIVIL MISC. APPEAL NO.1560/2006
(Smt.Chanda Kanwar & Anr. Vs Devi Lal & Ors.)

Date of Order :: 11.12.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Jagdish Vyas, for the insurer.
Mr. Rajendra Charan, for the claimants

Vide order made in S.B.Civil Misc. Appeal No. 165/2005 (The New India Assurance Company Ltd. Vs. Smt. Chanda).

BY ORDER,

COURT MASTER